

COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (the "Agreement") is entered into by and between Google Inc., a Delaware corporation with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043 ("Google"), and The University of Texas at Austin, a state agency and institution of higher education organized under the laws of the State of Texas, for and on behalf of the University Libraries with its principal offices at 1 University Station S5400, Austin, Texas 78712 ("University"), and is effective as of the last date this Agreement is signed by the parties (the "Effective Date"). Google and University herein are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, University is a leading academic institution and has amassed an enormous collection of works in various media located at various University libraries and research centers;

WHEREAS, Google provides the public with access to web pages on the Internet, among other products and services;

WHEREAS, Google and the University share a mutual interest in making information available to the public; and

WHEREAS, Subject to the terms set forth herein, the Parties desire to enter into a non-exclusive agreement whereby Google will digitize works from the University collections to include them in Google's services, and provide access to the digitized works to the University as described herein.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, Google and University hereby agree as follows:

DEFINITIONS

1. **DEFINITIONS.** Capitalized terms will have the meanings set forth below:

1.1 "Available Content" means selections from the University Collections as identified by Google and the University. Without limiting the foregoing, "Available Content" also includes University Digital Content.

1.2 "Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each Party, respectively, as secured by such Party from time to time.

1.3 "Digitize" means to convert content from a tangible, analog form into a digital electronic representation of that content. "Digitization", "Digitizing" and "Digitized" shall have corresponding meanings.

1.4 "End User" means a person that accesses or uses the Google Services.

1.5 "Google Digital Copy" means a digital copy retained by Google of the Selected Content that is Digitized by Google.

1.6 "Google Services" means Google's products and services that are accessible through and otherwise provided by various computer and electronic technologies, networks (syndicated and otherwise) and systems, including without limitation, mobile wireless services and Internet-

based services accessible through the Google Sites and any Google syndication partner sites.

1.7 “Google Site” means any web site located at a Google-owned domain, including all subdomains and directories thereof, and all successor sites thereto.

1.8 “Hosted Access” shall have the meaning set forth in Section 4.6.

1.9 “Initial Term” shall have the meaning set forth in Section 8.1.

1.10 “Other Library” means any library (including any libraries affiliated or associated with any university or other educational institution, other than University) with which Google has an agreement as of the Effective Date concerning Digitization by Google of content from that library.

1.11 “Project” means a project for digitizing certain Selected Content.

1.12 “Project Plan” means a written plan for implementing a Project. The Project Plan shall include the following: (1) timetable for Digitizing the Selected Content, (2) instructions by University regarding how the Selected Content is to be collected and returned by Google; (3) material handling processes for the Selected Content, (4) if required, the amount of time available to University for performing conservation efforts; (5) the amount of time available to Google from receipt of the Selected Content until it is due to be returned to University; and (6) a budget for the Project.

1.13 “Renewal Term” shall have the meaning set forth in Section 8.1.

1.14 “Selected Content” means the portion of the Available Content that Google desires to Digitize or incorporate into the Google Services, both collectively and its component parts, including any and all other works of authorship included therein.

1.15 “Term” shall have the meaning set forth in Section 8.1.

1.16 “University Collections” means those collections of the University of Texas at Austin which may be administered by a University library, research center, or other University organizational unit.

1.17 “University Collections Digital Content” means content that University already has in its possession in Digitized form, as of the Effective Date.

1.18 “University Digital Copy” means the Digitized copy of the Selected Content as specified in Section 4.7.

1.19 “University Library Patrons” means the sum total of all individuals and organizations that access University Collections from University library websites.

TERMS

2. DIGITIZATION OPERATIONS.

2.1 Identifying and Collecting Content to be Digitized. The Parties shall in good faith identify Available Content that Google may elect to Digitize; provided that University agrees to commit no fewer than one million (1,000,000) volumes to the Digitization efforts under this Agreement. The Parties shall cooperate in good faith and with diligence to determine the rate in which University will provide books of Selected Content to Google to Digitize and will develop a timetable for completing each Project Plan for Digitizing Selected Content. University will provide Google with metadata for each Selected Content to be Digitized in the format specified by Google prior to Google Digitizing any Selected Content. Also, University will provide Google with an identifier

such as an OCLC call number for each text of the Available Content as soon as reasonably possible after the Effective Date and prior to the commencement of Digitization efforts under this Agreement. Google will use such identifier information for internal purposes only.

2.2 Collecting the Selected Content. University shall be responsible for locating, pulling and moving the Selected Content to a designated location at the University facility where Google can collect it, as well as later re-shelving the Selected Content when the Digitization is complete. If agreed upon by the Parties in a particular Project Plan, the collection, pulling, moving, and re-shelving functions may be assigned to Google. Upon commencement of a Project, University shall at its sole discretion perform any conservation efforts, at its expense, that it determines are required and/or desirable for the Selected Content prior to Digitization. On a rolling basis, as this conservation effort is completed, University shall provide the conserved Selected Content to Google for Digitizing.

2.3 Locating the Digitization Operation. Google will designate a location where the Selected Content will be Digitized. Google shall pay for any and all fees and costs associated with the use of said space; University shall not be liable for any such fees and costs. Google agrees that each Digitization facility it controls will, at all times, be reasonably clean, dry, cool, protected from fire and secure against theft and vandalism and at no time shall smoking be permitted in any Digitization facility. Google personnel, agents, contractors and other representatives involved in the Digitization and/or handling of the Selected Content will satisfy and comply with standards mutually agreed by the Parties in any Project Plan. University agrees that Google may remove the Selected Content from University premises to perform the Digitization in facilities controlled by Google.

2.4 Digitizing the Selected Content. Subject to handling constraints or procedures specified in any Project Plan, Google shall in its sole discretion determine how best to Digitize the Selected Content. While the Selected Content is within Google's possession, Google shall use commercially reasonable efforts to minimize damage to the Selected Content, including handling the Selected Content in accordance with handling instructions set forth in the relevant Project Plan, if any. If the University establishes that Selected Content was not returned in substantially the same condition, Google will, at Google's option and the University's sole remedy, either replace the Selected Content in question or pay the University for the repair or replacement of such Selected Content up to a maximum as may be specified in the relevant Project Plan provided that University agrees that Google's obligation will not exceed \$1,000 for any given text and that Google's maximum liability for any damage or loss to Selected Content in Google's custody resulting from a single incident or event will not exceed one million dollars (\$1,000,000). Unless the University makes Google aware that specific materials require non-standard care, transport, and processing and Google decides to go forward with Digitization of such items, Google shall have no responsibility to undertake special efforts to address unique or fragile conditions in its transport or handling of individual items. University will provide Google with a good faith estimate of the value of any Selected Content approved for removal from University premises and will provide Google with an itemized list of any such materials.

2.5 Return of the Selected Content. Google shall return the Selected Content to the source from which Google obtained it and in the like manner in which it was collected after Google completes Digitizing the Selected Content. Google will use reasonable commercial efforts to ensure that Selected Content is returned within ten (10) business days of its being scanned or after a determination is made by Google that Selected Content will not be scanned. Notwithstanding the foregoing, Google agrees that no materials in a Project will be off the University's shelves for longer than fifteen (15) business days or for a longer period as may be specified in the relevant Project Plan.

3. COSTS.

3.1 Costs paid by University. In addition to costs mutually agreed upon by the Parties, University shall be responsible for the following costs: (a) those related to locating, pulling and moving the Selected Content to and from the designated location at the University facility so that Google can collect it as well as re-shelving the Selected Content when the Digitization is complete, (b) those related to University employees and agents whose participation is contemplated by this Agreement, (c) network bandwidth and data storage required by University to receive all of the University Digital Copy, (d) any conservation efforts that University elects to undertake on the Selected Content prior to Digitizing, and (e) barcoding and associated data entry to barcode the Selected Content.

3.2 Costs borne by Google. In addition to costs mutually agreed upon by the Parties, Google shall be responsible for the following costs: (a) those related to Google employees whose participation is contemplated by this Agreement, (b) hardware and software required to Digitize the Selected Content, (c) space required to Digitize the Selected Content, and (d) transportation of Selected Content from the designated location at the University facility to a Google designated facility to perform the Digitization.

3.3 Budgets. Notwithstanding the foregoing, University and Google may jointly develop a budget for each Project Plan, pursuant to which the Parties can allocate the cost of researching and identifying the Selected Content, conducting conservation assessments, performing conservation work, performing any required copyright research and clearances, and metadata development as required. Any such budget will take precedence over the provisions of Sections 3.1 and 3.2 above and will be effective only after set forth in a writing signed by both Parties.

4. OWNERSHIP AND USE OF DIGITAL COPIES AND SERVICES.

4.1 Copyright Status. The Parties understand that the Selected Content may include some works that will be treated hereunder as public domain works and some works that will be treated hereunder as in-copyright works. Both Google and University agree and intend to perform this Agreement in compliance with copyright law. Each Party will be responsible for the determination of how to treat a work for each jurisdiction at its sole discretion. Notwithstanding such determination, if either Party believes a work (or portion thereof) should be treated as an in-copyright work in either the United States or another jurisdiction, and so notifies the other Party, then, within forty-eight (48) hours of such notice, such work (or portion thereof) shall be treated as an in-copyright work for use in the relevant country. In addition, Google will implement processes whereby any person or entity can request that Google not Digitize any Available Content or to stop displaying or using any Digitized Selected Content which Google will comply with so long as Google determines that the person or entity making the request is the copyright holder or has actual or apparent authority to act on behalf of the copyright holder.

4.2 Ownership and use of Google Digital Copy. As between Google and University and subject to the provisions in this Section 4, Google shall own all rights, title, and interest in and to the Google Digital Copy.

4.3 Google use of Google Digital Copy. Subject to the restrictions set forth herein, Google may use the Google Digital Copy, in whole or in part at Google's sole discretion, subject to copyright law, as part of the Google Services. Google agrees that to the extent that it or its successors use any Digitized Selected Content in connection with any Google Services, it shall provide a service at no cost to End Users (1) for both search and display of search results and (2) for access to the display of the full text of public domain works contained in the Digitized Selected Content. To the extent portions of the Google Digital Copy are either in the public domain or where Google has otherwise obtained authorization, Google shall have the right, in its sole discretion, among other things, to (a) index the full text or content, (b) serve and display full-sized digital images corresponding to those portions, (c) make available full text of content for printing

and/or download, and (d) make copies of such portions of the Google Digital Copy and provide, license, or sell such copies (including, without limitation, to its syndication partners). For all other portions of the Google Digital Copy, Google may index the full text or content but may not serve or display the full-sized digital image or make available for printing, streaming and/or download the full content unless Google has permission or license from the copyright owner to do so; Google instead may serve and display (1) an excerpt that Google reasonably determines would constitute fair use under copyright law and (2) bibliographic (e.g. title, author, date, etc.) and other non-copyrighted information. In the event that Google has received a license or other permission from the applicable copyright holder to use in-copyright works in the Google Digital Copy, Google may use those works in any manner permitted under the terms of such license.

4.4 Security and Privacy Regarding Google's Use of the Google Digital Copy. Google shall implement commercially reasonable technological measures (e.g., through use of the robots.txt protocol) to restrict automated access to any portion of the Google Digital Copy that is in-copyright. In addition, Google shall maintain on its website a privacy policy that governs collection and use of information that Google obtains from End Users.

4.5 Ownership and Control of Google Services. As between the Parties, the Google Services and all content therein are, and at all times will remain the exclusive property of Google or its partners; nothing in this Agreement implies any transfer to University of any ownership interest in the Google Services. University acknowledges and agrees that Google retains control of the Google Services, and that the design, layout, content, functions and features of the Google Services are at Google's discretion. Notwithstanding anything to the contrary in this Agreement, Google is not required to make any or all of the Google Digital Copy available through the Google Services.

4.6 Hosted Access. During the Term, Google will provide searchable access to the Google Digital Copy at no charge to University and to University Library patrons via a website that will be hosted by Google ("**Hosted Access**"). The design, layout, content, functions and features of Hosted Access will be determined by Google but substantially similar to that provided by Google to any Other Library as such features evolve during the Term.

4.7 University Digital Copy. Unless otherwise agreed by the Parties in writing, the "**University Digital Copy**" means the digital copy of the Selected Content that is Digitized by Google consisting of (a) a set of image and OCR files, (b) associated meta-information about the files including bibliographic information consisting of title and author of each Digitized work and technical information consisting of the date of scanning the work, information about which image files correspond to what Digitized work, and (c) a list of works that are supplied for Digitization but not actually Digitized.

4.7.1 Google agrees to provide to University access to one copy of all Digitized Selected Content that has been "Successfully Processed" within thirty (30) days after the Selected Content is Digitized, or in a timeframe mutually agreed by the Parties. Selected Content is "**Successfully Processed**" when Google determines it has satisfactorily gone through all stages of Google's Digitization, post processing and quality assurance procedures. In addition Google will provide the University with the ability to sample the files for two hundred and fifty (250) Digitized works per quarter to assess quality. Google agrees that the quality of files provided to University in the University Digital Copy will be substantially similar to the quality of files provided to any Other Library. Google shall provide the University Digital Copy via a network connection, or in any other manner mutually agreed upon by the Parties. Notwithstanding anything to the contrary herein, Google may withhold any works in dispute as set forth in Section 4.1 from the University Digital Copy and the University will delete any such works that were previously provided to University as part of the University Digital Copy.

4.8 Ownership and use of University Digital Copy. As between Google and University and subject to the restrictions in this Section 4, University shall own all rights, title, and interest to the

University Digital Copy. Without limiting the foregoing, University shall not display or otherwise use the University Digital Copy except as expressly permitted in this Agreement.

4.9 Use of University Digital Copy on University Website.

4.9.1 Uses by University Library Patrons: (a) University shall have the right to use the University Digital Copy in whole or in part at University's sole discretion, in accordance with copyright law, as part of services offered to University Library Patrons; provided that University not charge or receive payment or other consideration for such use of the University Digital Copy. (b) University may, however, charge for services it provides that build upon the University Digital Copy. For example, University may charge University Library Patrons for access to annotations provided by professors and scholars even though the original work digitized by Google will always be accessible without a fee. University may also charge University Library Patrons to recover copying costs actually incurred in serving their needs.

4.9.2 Public Access:

(a) **Digitized by Google Reference.** University agrees to identify the works within the University Digital Copy that it makes available to the public as "Digitized by Google" in a statement on a web page or other access point to be mutually agreed to by the Parties, or in a substantially similar manner.

(b) **Automated Access.** University shall implement technological measures such as the robots.txt protocol or similar measures to restrict automated access to any portion of the University Digital Copy or the portions of the University website on which any portion of the University Digital Copy is available.

(c) **Commercial and Systematic Downloading and Distribution.** University shall also make reasonable efforts to prevent third parties from (i) downloading or otherwise obtaining works from the University Digital Copy for commercial purposes, (ii) commercial redistribution of works from the University Digital Copy, or (iii) automated and systematic downloading or distribution to the public at large of substantial portions of the University Digital Copy from the services offered on University's website.

(d) **Protection for Internal Archive.** University shall implement security and handling procedures for the University Digital Copy as mutually agreed by the Parties. Except as expressly allowed herein, University will not share, provide, license, or sell the University Digital Copy to any third party.

4.10 Distribution of the University Digital Copy.

4.10.1 Distribution to Libraries and Educational Institutions: Subject to the limitations set forth herein,

(a) University shall have the right to distribute no more than ten percent (10%) of public domain works from the University Digital Copy to other libraries and educational institutions in accordance with copyright law and in each case for non-commercial research, scholarly or academic purposes.

(b) University shall have the right to distribute all or any portion of the public domain works contained in the University Digital Copy to a library member of the Digital Library Federation or with Google's prior written consent, to other institutions (each recipient entity is referred to herein as a "**Recipient Institution**") for non-commercial research, scholarly or academic purposes by the Recipient Institution and the faculty, students, scholars and staff authorized by the Recipient Institution to access their commercially licensed electronic information products.

4.10.2 Limitations on Recipients of Distributed Copy:

(a) **Contract with Google:** Prior to any distribution by University to a Recipient Institution, Google and the Recipient Institution must have entered into a written agreement on terms acceptable to Google governing the use of the University Digital Copy and that, among other things, provide an indemnity to Google.

(b) **Contract with University:** In addition, University and Recipient Institution must enter

into a written agreement that

(A) prohibits that Recipient Institution from redistributing without first obtaining the prior written consent of Google,

(B) makes Google an express third party beneficiary of such agreement,

(C) provides an indemnity to Google from the Recipient Institution for the Recipient Institution's use of the University Digital Copy or part thereof,

(D) contains limitations at least as restrictive as the restrictions on University set forth in Section 4.9,

(E) contains limitations on the use of the University Digital Copy as set forth in clauses 4.10.1 (a) and (b) above, if any, and

(F) requires each Recipient Institution, to the extent it makes any portion of the University Digital Copy publicly available, to identify the works as "Digitized by Google" in a statement on the applicable web page or other access point, or in a substantially similar manner.

5. ACCESS, AUTHORIZATION AND SUPPORT.

5.1 Access. Google shall have the right to access Selected Content during University business/staff hours as required to exercise its rights and perform its obligations hereunder. If requested by Google, University shall provide Google with access to Selected Content outside of University business hours provided that Google notify University at least two (2) days in advance of its intent to access such materials.

5.2 Authorization. The University program manager responsible for the Selected Content involved in any Project Plan shall have authority to agree with Google on the time frames and procedures (e.g., collection, conservation, and handling) associated with that Selected Content. If Google in good faith believes that the time frames and procedures requested by the University program manager are unreasonable, Google shall escalate the matter to the University administrative contact; in which case Google, the University program manager, and the administrative contact shall meet to resolve the issue.

5.3 Support. Each party shall appoint one person to serve as the administrative contact for the other, should administrative questions or issues arise during the course of this Agreement. This administrative contact shall be available during regular business hours (9:00 a.m. to 5:00 p.m., Monday through Friday) at a telephone number and e-mail address to be provided by each party. Each party shall also appoint one person to serve as the technical contact for the other for obtaining and regulating the use of the University Digital Copy among other things. This technical contact shall be available during regular business hours at a telephone number and e-mail address to be provided by each party. Upon execution of this contract, both Google and University shall identify these individuals in writing, which may be email.

6. CONFIDENTIALITY.

6.1 Confidentiality. By virtue of this Agreement, each Party may have access to information of the other Party which is considered confidential and proprietary, including product plans, customer lists, and proprietary technology or methods ("**Confidential Information**"), whether disclosed in tangible or intangible form. Information disclosed in tangible form will be considered Confidential Information if it is marked as "Confidential". Information disclosed in intangible form will be considered Confidential Information if the disclosing Party clearly indicates that it is confidential at the time of disclosure.

6.2 Obligations. Each Party shall exercise the same degree of care, but no less than a reasonable degree of care, to avoid the publication or dissemination of the Confidential Information of the other Party as it affords to its own confidential information of a similar nature

which it desires not to be published or disseminated. The receiving Party ("**Recipient**") shall not use Confidential Information of the disclosing Party ("**Discloser**") except in connection with this Agreement and the matters contemplated hereby. The obligation of the parties not to disclose Confidential Information survives termination or cancellation of this Agreement.

6.3 **Exceptions.** This Agreement imposes no obligation upon a Recipient with respect to Confidential Information that: (a) was known to the Recipient before receipt from the Discloser; (b) is or becomes publicly available through no fault of the Recipient; (c) is rightfully received by the Recipient from a third party without a duty of confidentiality; (d) is independently developed by the Recipient without a breach of this Agreement; (e) is disclosed by the Recipient with the Discloser's prior written approval; or (f) is required to be disclosed by operation of law, court order or other governmental demand ("Process"); provided that (i) the Recipient shall immediately notify the Discloser of such Process; and (ii) the Recipient shall not produce or disclose Confidential Information in response to the Process unless the Discloser has: (a) requested protection from the legal or governmental authority and such request has been denied; (b) consented in writing to the production or disclosure of the Confidential Information in response to the Process; or (c) taken no action to protect its interest in the Confidential Information within 10 business days after receipt of notice by the Recipient of its obligation to produce or disclose Confidential Information in response to the Process.

6.4 **Public Relations; Publicity.** Neither Party will issue publicity announcements, press releases or other public statements regarding the Agreement without the other Party's prior written approval. Google may include the name "The University of Texas at Austin" and the University logo illustrated in Attachment A hereto ("Logo") in factual statements about University's participation in Google's digitization efforts, for example, in lists of other partner universities, with the prior written permission of the University's Director of Trademark Licensing; provided that Google is not required to obtain separate permissions for each use of the Logo so long as subsequent uses are similar to the prior reviewed and approved use. As a courtesy to University to permit University to confirm Google's judgments regarding similarity, Google will provide University post-hoc notice of its similar uses for the first three (3) months of the Term.

7. BRAND FEATURES.

7.1 **Ownership.** Each Party shall own all right, title and interest relating to its Brand Features. Some, but not all examples of Google Brand Features are located at: <http://www.google.com/permissions/trademarks.html> (or such other URLs Google may provide from time to time). Except to the limited extent expressly provided in this Agreement, neither Party grants, and the other Party shall not acquire, any right, title or interest (including, without limitation, any implied license) in or to any Brand Features of the first Party; and all rights not expressly granted herein are deemed withheld. All use by Google of University Brand Features (including any goodwill associated therewith) shall inure to the benefit of University and all use by University of Google Brand Features (including any goodwill associated therewith) shall inure to the benefit of Google. No Party shall challenge or assist others to challenge the Brand Features of the other Party (except to protect such Party's rights with respect to its own Brand Features) or the registration thereof by the other Party, nor shall either Party attempt to register any Brand Features or domain names that are confusingly similar to those of the other Party.

7.2 **License to University Brand Features.** Subject to the terms and conditions of this Agreement, University grants to Google a limited, nonexclusive and nonsublicensable license during the Term to display those University Brand Features expressly authorized for use in this Agreement, solely for the purposes expressly set forth herein. Notwithstanding anything to the contrary, University may revoke the license granted herein to use University's Brand Features upon providing Google with written notice thereof and a reasonable period of time to cease such usage.

8. TERM AND TERMINATION.

8.1 **Term.** This Agreement is effective as of the Effective Date and continues in full force and effect for a period of six (6) years, unless earlier terminated as provided herein (the “**Initial Term**”). Upon the expiration of the Initial Term, this Agreement shall automatically renew for additional one year terms (each a “**Renewal Term**”) unless either Party notifies the other Party to the contrary at least thirty (30) days before the end of either the Initial Term or a Renewal Term. The “**Term**” of this Agreement shall comprise the Initial Term and any Renewal Terms.

8.2 **Termination.** Either Party may suspend performance and/or terminate this Agreement: (i) if the other Party materially breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof; or (ii) if the other Party becomes insolvent or makes any assignment for the benefit of creditors or similar transfer evidencing insolvency, or suffers or permits the commencement of any form of insolvency or receivership proceeding, or has any petition under bankruptcy law filed against it, which petition is not dismissed within sixty (60) days of such filing, or has a trustee, administrator or receiver appointed for its business or assets or any part thereof.

8.3 **Effect of Expiration or Termination.** After expiration or termination of this Agreement for any reason: (i) each Party shall within thirty (30) days return to the other Party (or, at that Party's request, destroy) any Confidential Information of that Party that is in its possession, (ii) Google shall within thirty (30) days return to the University any Selected Content that it has in its possession or in transit at termination in a manner specified in Section 2.5, (iii) the University shall within ninety (90) days download any digitized Selected Content that has been created by Google during the Term but not yet downloaded by the University at termination, in a manner specified in Section 4.7.1. The following sections survive expiration or termination of this Agreement: 1, 2.4, 2.5, 4 (excluding Section 4.6), 6, 8.3, 9, 10, 11 and 12.

9. WARRANTIES AND DISCLAIMER.

9.1 **Mutual Warranties.** Google warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation. Each Party represents to the other that (i) the individual who executes this Agreement has full power and authority to do so; and (ii) this Agreement constitutes its valid and binding obligation, enforceable against it in accordance with its terms.

9.2 **Disclaimer.** THE WARRANTIES EXPLICITLY SET FORTH ABOVE ARE THE ONLY WARRANTIES PROVIDED HEREIN AND ARE IN LIEU OF ALL OTHER WARRANTIES BY THE PARTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BOTH PARTIES SPECIFICALLY DISCLAIM ANY WARRANTY REGARDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY.

10. INDEMNIFICATION.

10.1 **By Google.** Google shall defend, indemnify, and hold harmless University from and against any and all liabilities, damages, charges, fees, including reasonable attorney's fees, costs, and expenses incurred by University and arising out of a third party claim, lawsuit and/or any other legal, quasi-legal, or administrative proceeding alleging that any or all of the following violate any applicable law, including, but not limited to, an allegation of copyright infringement: University's provision of Available Content to Google for digitization but only to the extent such provision is alleged to be direct or secondary copyright infringement; Google's Digitization of Available Content; the use or distribution of Google Digital Copy(ies); and/or the use of the

Google Digital Copy in connection with Google Services. The foregoing indemnification excludes any third party claim that relates to University's use or distribution of the University Digital Copy.

10.2 **By University.** Consistent with and subject to the requirements of the Constitution and Laws of the State of Texas, University shall defend, indemnify, and hold harmless Google from and against any and all liabilities, damages, charges, fees, including reasonable attorney's fees, costs and expenses incurred by Google and arising out of a third party claim, lawsuit and/or any other legal, quasi-legal, or administrative proceeding alleging that University's use or distribution of the University Digital Copy (including any use by a third party) violates any applicable law including, but not limited to, an allegation of copyright infringement. The foregoing indemnification excludes any third party claim that relates to University's provision of Available Content to Google for Digitization to the extent such provision is alleged to be direct or secondary copyright infringement; Google's Digitization of Available Content; the use or distribution of Google Digital Copy(ies); and/or the use of the Google Digital Copy in connection with Google Services.

10.3 **General.** The foregoing obligations shall exist only if the party seeking indemnification ("**Indemnitee**") (i) promptly notifies the indemnifying party ("**Indemnitor**") of such claim, (ii) provides the Indemnitor with reasonable information, assistance and cooperation in defending the claim, lawsuit or proceeding, and (iii) gives the Indemnitor full control and sole authority over the defense and settlement of such claim, subject to the statutory obligations of the Texas Attorney General when the University is named as a defendant in a lawsuit. The Indemnitee may join in defense with counsel of its choice at its own expense

11. Limitation of Liability

(A) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND (B) EACH PARTY'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO ONE MILLION DOLLARS (\$1,000,000). The Parties agree that (i) the mutual agreements made in this Section 11 reflect a reasonable allocation of risk, and (ii) that each party would not enter into the Agreement without these limitations on liability. The foregoing limitations however, are not applicable to any damages arising from a breach of Section 6, Confidentiality, to any monetary obligations arising out of the indemnification obligations in Section 10, Indemnification, including, but not limited to, indemnification for allegations of copyright infringement, or to any damages related to actions for personal injury or willful misconduct. The limitations set forth in (B) above are not applicable to damages arising from works that are lost, stolen or damaged while such works are in Google's custody or control subject to the limits set forth in Section 2.4. University's obligations set forth in this Section are subject to the provisions of Section 12.13.

12. GENERAL PROVISIONS.

12.1 **No Obligation.** Notwithstanding the foregoing, Google shall have no obligation to digitize any portion of the Available Content nor to use any portion of the Google Digital Copy as part of the Google Services. University shall not be obligated to participate in any Project Plan to the extent University does not have sufficient funds to perform its budgeted obligations under that Project Plan. Furthermore, notwithstanding anything in this Agreement to the contrary, if Google determines, at its sole discretion, not to digitize some or all Selected Content in connection with one or more specific Projects, whether due to cost issues, conservation concerns or otherwise, Google shall have no obligation to the University with respect to digitizing or delivering the University Digital Copy with respect to such Selected Content.

12.2 Assignment. Neither Party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Party, which shall not unreasonably be withheld, except that either Party may assign its rights and delegate its duties under this Agreement upon written notice to the other Party to a division or an affiliate thereof (that is not a competitor of the non-assigning Party), provided such division or affiliate agrees to be bound by all of the terms hereof; and provided further that Google may assign this Agreement without consent to a successor-in-interest in connection with a merger or the sale of all or substantially all of its assets. Any attempted assignment, delegation or transfer in derogation hereof shall be null and void.

12.3 Continuity. This Agreement shall be binding upon the successors and permitted assigns of both Parties.

12.4 Notices. Unless provided for to the contrary in this Agreement, any and all notices or other communications or deliveries required or permitted to be made under this Agreement shall be deemed received (i) upon receipt when delivered personally, (ii) upon written verification of receipt from overnight courier, (iii) upon verification of receipt of registered or certified mail or (iv) upon verification of receipt via facsimile, provided that such notice is also sent simultaneously via first class mail and addressed as follows:

If to University:

The University of Texas at Austin
Office of the Vice-President and Chief Financial Officer
PO Box 8179
Austin, TX 78713-8179
ATTN: Kevin P. Hegarty, Vice President and Chief Financial Officer

With a copy to:

The University of Texas at Austin
University of Texas Libraries
Office of the Vice-Provost
1 University Station S5400
Austin, TX 78712
ATTN: Fred M. Heath, Vice Provost and Director of Libraries

If to Google:

to such address as provided at www.google.com/corporate/address.html or as otherwise provided in writing for such notice purposes. A second copy of every notice to Google shall be sent to the same address, "Attn: Legal Dept".

Contact information shall be updated in writing as necessary to ensure that each Party has current information regarding all such contacts.

12.5 Independent Contractors. The Parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to create an agency, partnership, or joint venture between the Parties hereto. This Agreement does not affect any right that either Party would have had, or shall have, independent of the Agreement under applicable law.

12.6 Force Majeure. Neither Party shall be liable for failing or delaying performance of its obligations resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances.

12.7 Enforceability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the Parties.

12.8 Non-Waiver. The failure of either Party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches.

12.9 Limitation of Rights. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any person or entity other than the Parties and their respective successors and assigns.

12.10 Headings. The section and paragraph headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

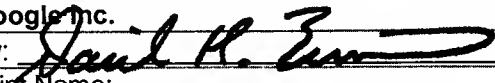
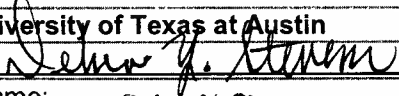
12.11 Amendment. This Agreement sets forth the entire understanding and agreement between the Parties and may be amended only in a writing signed by both Parties.

12.12 Franchise Tax Certification. Google is an out-of-state corporation that is not subject to the Texas Franchise Tax.

12.13 Dispute Resolution. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by University and Google to attempt to resolve any claim for breach of contract made by Google that cannot be resolved in the ordinary course of business. The Chief Business Officer of University shall examine Google's claim and any counterclaim and negotiate with Google in an effort to resolve such claims. The Parties specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit; and (ii) University has not waived its right to seek redress in the courts.

[Rest of page left intentionally blank.]

IN WITNESS WHEREOF, this Agreement has been executed by persons duly authorized as of the "Effective Date", which shall be the date written by Google below.

Google Inc.	The University of Texas at Austin
By: 	By: 
Print Name: DAVID EUN	Print Name: Debra Y. Stevens
Title: Vice President, Content Partnerships	Title: Business Contracts Administrator
Date: Google, Inc.	Date: 1-5-07

12-21-06P04:40 RCVD

Attachment A: The University of Texas Logo

As set forth in Section 6.4, the Logo of The University of Texas at Austin shall be an interlocking UT, represented below.

